

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ALLEN JENKINS,

Defendant-Appellee.

UNPUBLISHED

February 9, 2001

No. 227328

Wayne Circuit Court

LC No. 99-010048

Before: Talbot, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

The prosecution appeals by right from an order dismissing the charge of resisting or obstructing an officer in discharge of duty, MCL 750.479; MSA 28.747. We reverse and remand.

Defendant was charged with resisting or obstructing the efforts of the police to arrest him pursuant to an outstanding arrest warrant. Police Officer Mike Dekun testified that he identified himself as a police officer and ordered defendant to stop. Defendant fled on his bicycle. Dekun and his partner pursued and ultimately apprehended defendant. Dekun testified that in the course of the arrest, defendant threw his bicycle at Dekun, injuring him. During defendant's bench trial, the prosecution discovered that it was unable to produce the bicycle. Defendant moved for a dismissal of his case with prejudice due to the police department's negligent loss of his bicycle as evidence which defendant considered necessary to his defense. At the conclusion of an evidentiary hearing, the trial court determined that the police department had been negligent in its possession of the bicycle, and dismissed the case on that basis.

On appeal, the prosecution argues that defendant's motion to dismiss should have been denied. This Court reviews a trial court's ruling regarding a motion to dismiss for an abuse of discretion. *People v Adams*, 232 Mich App 128, 132; 591 NW2d 44 (1998). To the extent that defendant's constitutional right to due process is implicated, review is de novo. *People v Walker*, 234 Mich App 299, 302; 593 NW2d 673 (1999).

The failure of the state to preserve evidence potentially useful to a defendant raises due process concerns. *Arizona v Youngblood*, 488 US 51; 109 S Ct 333, 334; 102 L Ed 2d 281, 285 (1988); *People v Leigh*, 182 Mich App 96, 98; 451 NW2d 512 (1989). Michigan applies the standard set forth in the United States Supreme Court's analysis in *Youngblood*, *supra*. *People v*

Hunter, 201 Mich App 671, 677; 506 NW2d 611 (1993); *Leigh*, *supra* at 98. See also, *People v Huttenga*, 196 Mich App 633, 642; 493 NW2d 486 (1992). Failure to preserve evidentiary material that may have exonerated a defendant will not constitute a denial of due process unless bad faith on the part of the police is shown. *Hunter*, *supra* at 677, citing *Youngblood*, *supra* at 57.

Based upon the evidence adduced in the case at bar, the bicycle would not exculpate defendant. The prosecution presented evidence to support a finding that defendant resisted arrest, regardless of whether defendant threw his bicycle at Officer Dekun. See *People v Lane*, 127 Mich App 663, 665-666, 669-671; 339 NW2d 522 (1983). Defendant admitted that he resisted arrest by fleeing from the officers because he knew that there was a warrant out for his arrest, and evidence was presented that defendant wrestled with an officer prior to being handcuffed. Whether this interaction occurred involves a credibility issue between defendant and the officers upon which the absence of defendant's bicycle has no bearing. Therefore, the condition of defendant's bicycle, and whether it was run over by the police car or thrown by defendant, is immaterial to a determination of whether defendant resisted arrest.

We further note that there is no evidence that the loss of the bicycle was due to the bad faith of the officers. See *People v Brown*, 126 Mich App 282, 285, 289-290; 336 NW2d 908 (1983), citing *People v Amison*, 70 Mich App 70, 79; 245 NW2d 405 (1976). Although the facts of the case may suggest that the police department's procedures for storing evidence were inadequate, they do not reveal any bad faith by the officers or the police department regarding the storing of defendant's bicycle.

Because the trial court improperly granted defendant's motion to dismiss, the trial court's order of dismissal with prejudice is reversed. This matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper